

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Moss	Team: Squad #13	CCRB Case #: 201909527	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/01/2019 12:30 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 12/16/2021	Precinct: 46		
Date/Time CV Reported Fri, 11/01/2019 4:59 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 11/01/2019 4:59 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Clarence Brown	19647	963885	046 PCT
2. POM Joseph Iobbi	21087	964067	046 PCT
3. SGT Brian Martin	05506	930653	046 PCT
4. POM John Mcging	11170	917971	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Clarence Brown	Abuse: Police Officer Clarence Brown entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POM Joseph Iobbi	Abuse: Police Officer Joseph Iobbi entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C.POM Clarence Brown	Abuse: Police Officer Clarence Brown searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.POM Joseph Iobbi	Abuse: Police Officer Joseph Iobbi searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
E.POM Clarence Brown	Abuse: Police Officer Clarence Brown entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
F.POM Joseph Iobbi	Abuse: Police Officer Joseph Iobbi entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
G.POM Clarence Brown	Abuse: Police Officer Clarence Brown searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
H.POM Joseph Iobbi	Abuse: Police Officer Joseph Iobbi searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
I.POM Clarence Brown	Abuse: Police Officer Clarence Brown threatened to arrest § 87(2)(b)	§ 87(2)(b)
J.POM Clarence Brown	Discourtesy: Police Officer Clarence Brown acted discourteously toward § 87(2)(b)	§ 87(2)(b)
K.POM Joseph Iobbi	Discourtesy: Police Officer Joseph Iobbi acted discourteously toward § 87(2)(b)	§ 87(2)(b)
L.POM Clarence Brown	Discourtesy: Police Officer Clarence Brown spoke discourteously to § 87(2)(b)	§ 87(2)(b)
M.POM Clarence Brown	Off. Language: Police Officer Clarence Brown made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
N.SGT Brian Martin	Abuse: Sergeant Brian Martin entered § 87(2)(b) in the Bronx.	
O.SGT Brian Martin	Abuse: Sergeant Brian Martin searched § 87(2)(b) in the Bronx.	
P.POM John McGing	Abuse: Police Officer John McGing damaged § 87(2)(b) property.	
Q.SGT Brian Martin	Abuse: Sergeant Brian Martin entered § 87(2)(b) in the Bronx.	
R.SGT Brian Martin	Abuse: Sergeant Brian Martin searched § 87(2)(b) in the Bronx.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On November 1, 2019, § 87(2)(b) filed this complaint via the CCRB's website.

On November 1, 2019, at approximately 12:15 a.m., Police Officers Clarence Brown and Joseph Iobbi of the 46th Precinct responded to 911 calls placed by § 87(2)(b) who claimed that § 87(2)(b) unlawfully evicted him from their shared residence, located at § 87(2)(b) in the Bronx. PO Brown and PO Iobbi allegedly entered and searched the apartment and § 87(2)(b) bedroom (**Allegations A-H – Abuse of Authority: Entry and Search of Premises;** § 87(2)(g) PO Brown threatened to arrest § 87(2)(b) (**Allegation I – Abuse of Authority: Threat of Arrest;** § 87(2)(g) The officers allegedly stood on § 87(2)(b) prayer rug and prayer beads (**Allegations J-K – Discourtesy: Action;** § 87(2)(g) PO Brown allegedly said § 87(2)(b) got on his “fucking nerves” (**Allegation L – Discourtesy: Word;** § 87(2)(g) and allegedly called him “boy” (**Allegation M – Offensive Language: Race;** § 87(2)(g) Sergeant Brian Martin and Police Officer John McGing of the 46th Precinct also arrived, and they entered and searched the apartment (**Allegations N-O – Abuse of Authority: Entry of Premises;** § 87(2)(g) PO McGing allegedly ordered § 87(2)(b) to break down the door to § 87(2)(b) bedroom (**Allegation P – Abuse of Authority: Property Damaged;** § 87(2)(g) Sgt. Martin entered and searched the bedroom (**Allegations Q-R – Abuse of Authority: Entry and Search of Premises;** § 87(2)(g) The officers issued § 87(2)(b) a summons for unlawful eviction. OCA contains no information regarding the outcome of that summons (**BR 1**).

The investigation obtained partial body-worn-camera (BWC) footage from PO Iobbi and PO Brown,

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) The BWC footage is in IAs 100-101 (**BRs 2-3**), and summarized in IAs 117-118 (**BRs 4-5**).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Clarence Brown entered § 87(2)(b) **in the Bronx.**

Allegation B – Abuse of Authority: Police Officer Joseph Iobbi entered § 87(2)(b) **in the Bronx.**

Allegation C – Abuse of Authority: Police Officer Clarence Brown searched § 87(2)(b) **in the Bronx.**

Allegation D – Abuse of Authority: Police Officer Joseph Iobbi searched § 87(2)(b) **in the Bronx.**

Allegation E – Abuse of Authority: Police Officer Clarence Brown entered § 87(2)(b) **in the Bronx.**

Allegation F – Abuse of Authority: Police Officer Joseph Iobbi entered § 87(2)(b) **in the Bronx.**

Allegation G – Abuse of Authority: Police Officer Clarence Brown searched § 87(2)(b) **in the Bronx.**

Allegation H – Abuse of Authority: Police Officer Joseph Iobbi searched § 87(2)(b) **in the Bronx.**

The following facts are undisputed: On October 31, 2019, § 87(2)(b) called 911 after § 87(2)(b) changed the locks to the front door of their shared, single-unit apartment. § 87(2)(b) had been renting a room in the apartment from § 87(2)(b) and they had recently gone to landlord-tenant court, where § 87(2)(b) obtained an eviction order for § 87(2)(b). Either shortly before or after 11:59 p.m. on October 31, 2019, PO Brown and PO Iobbi responded to the location and spoke with § 87(2)(b) who showed them the court paperwork. § 87(2)(b) believed the paperwork allowed him to access the apartment through all of October 31, 2019, and the officers agreed. The officers spoke with § 87(2)(b) and entered the apartment, including § 87(2)(b) private bedroom.

§ 87(2)(b) said he was praying in his bedroom when he heard loud banging on his front door (**BR 6**). The people at the front door did not announce themselves. Frightened, he called 911. After several minutes, the banging stopped and he went to his window, where he saw officers across the street. He exited his apartment to tell the officers about the banging and they said they had been the ones knocking. § 87(2)(b) asked why, and they said they needed to enter the apartment because § 87(2)(b) had a few items to retrieve from his room. § 87(2)(b) said § 87(2)(b) did not have any items left in the bedroom, and the officers said they needed to check. Based on the landlord-tenant court paperwork, it was § 87(2)(b) understanding that he was legally entitled to evict § 87(2)(b) on October 31, 2019, and that he did not need to wait until after midnight (i.e. November 1, 2019). § 87(2)(b) had already moved out and had taken all his possessions. As such, § 87(2)(b) changed the locks to the apartment's front door earlier on October 31, 2019, and he believed § 87(2)(b) no longer lived there. § 87(2)(b) did not want to let the officers in, but he felt he had no choice because they said they needed to come inside. He therefore opened his front door and allowed them to enter.

In a phone statement, § 87(2)(b) said the officers informed § 87(2)(b) that they needed to escort § 87(2)(b) inside so he could retrieve his items (**BR 7**).

PO Iobbi said § 87(2)(b) answered the apartment door after several minutes, and the officers explained that § 87(2)(b) wanted to retrieve possessions from his bedroom (**BR 8**). § 87(2)(b) admitted that he had changed the locks to the front door, but he said he had done so because he believed the paperwork allowed him to evict § 87(2)(b) on October 31, 2019. PO Iobbi believed that by changing the locks on October 31, 2019, § 87(2)(b) had illegally evicted § 87(2)(b). The officers asked § 87(2)(b) to go find the keys to § 87(2)(b) bedroom. § 87(2)(b) opened the front door and held it open, which PO Iobbi interpreted as an indication to enter. § 87(2)(b) continued to stand by the door and held it open while the officers entered so it would not close on them. Other than the fact that § 87(2)(b) opened the door and held it open until the officers fully entered, PO Iobbi had no specific indication that § 87(2)(b) wanted the officers inside. § 87(2)(b) never said he wanted them to remain outside. PO Iobbi entered the apartment because he did not know if § 87(2)(b) would go retrieve a weapon. He had no reason to believe § 87(2)(b) was either armed or dangerous, but he clarified that there was a general safety concern with losing sight of § 87(2)(b). For that same reason, he followed § 87(2)(b) into his private bedroom as § 87(2)(b) searched for the keys to § 87(2)(b) bedroom.

PO Brown also testified that when § 87(2)(b) answered the door, the officers asked him if § 87(2)(b) could retrieve items from his bedroom (**BR 9**). § 87(2)(b) was reluctant to allow § 87(2)(b) to enter, as he believed § 87(2)(b) did not have a right to come inside. The officers and § 87(2)(b) had a back-and-forth conversation for a few minutes, during which PO Brown said if § 87(2)(b) did not let § 87(2)(b) inside, he could “possibly be arrested for illegal eviction.” Like PO Iobbi, PO Brown believed § 87(2)(b) committed an illegal eviction when he changed the locks to the apartment on October 31, 2019. PO Brown did not, however, consider § 87(2)(b) under arrest at that point, and he did not activate his BWC because he believed the dispute would be resolved without an arrest or summons. PO Brown denied telling § 87(2)(b) that the officers “needed” to enter the apartment, and during his CCRB interview, he said he did not necessarily need to go inside the apartment with § 87(2)(b) to retrieve the items. PO Brown entered the apartment because he knew the men did not like each other, and he wanted to prevent the situation from escalating. He also entered because he believed § 87(2)(b) provided consent by not explicitly telling them to stay outside. § 87(2)(b) did not explicitly tell the officers that they could enter, nor did he gesture for them to enter. PO Brown followed § 87(2)(b) into his bedroom because he did not know if anyone else was in the apartment and there were general safety concerns associated with being in a stranger's home. The officers did not ask § 87(2)(b) if anyone else was in the apartment. There were no additional reasons PO Brown entered the

bedroom. PO Brown did not feel unsafe and did not have any specific safety concerns about § 87(2)(b)

There is no civilian cellphone footage, and neither officer activated his BWC during this portion of the incident (see Allegations S-T). The officers did not prepare a Consent to Search form for this incident, as evidenced by the negative results received for all Consent to Search forms prepared regarding the civilians and/or location on October 31, 2019 and November 1, 2019 (BR 10).

Under the Fourth Amendment of the U.S. Constitution and Article I, §12 of the New York Constitution, warrantless entries into private dwellings are presumptively unreasonable unless the occupants of the dwelling provide consent, or the officers prove exigent or emergency circumstances necessitated their entry. People v. Scott, 133 A.D.3d 794; Payton v. New York, 445 U.S. 573 (BRs 11-12). If one occupant of a dwelling provides consent but a different one on scene refuses, the officers may not enter. Georgia v. Randolph, 547 U.S. 103 (BR 13). NYC Administrative Code §14-173 establishes criteria officers must follow to ensure that a civilian's consent is voluntary, knowing, and intelligent (BR 14). NYPD Patrol Guide, Procedure 214-13, states that officers may not obtain consent using threats or promises, and they must record the civilian's consent with their BWCs and "document the time, location, and date of such search." It further states that in civil disputes such as this one, officers' roles are limited solely to preserving the peace and protecting life and property, as "the authority to break and enter pursuant to purely civil process such as repossessions, evictions and civil commitments is given to the city marshal" (BR 15).

§ 87(2)(g)

For one, § 87(2)(b) confirmed that the officers told § 87(2)(b) that they "needed" to come in. That language left § 87(2)(b) little to no opportunity to refuse. § 87(2)(b) still voiced his objection, as he believed § 87(2)(b) had already moved out and had no right to the apartment, but the officers went back-and-forth with him to persuade him otherwise. During that conversation, PO Brown told § 87(2)(b) that he could be arrested for an illegal eviction. Whether that threat was justified or not (see Allegation I), it understandably left § 87(2)(b) feeling as if he had no option but to let the officers inside. Furthermore, both officers believed they could enter because § 87(2)(b) did not explicitly state otherwise. However, officers must obtain a civilian's affirmative assent rather than his lack of dissent. Though PO Iobbi believed § 87(2)(b) provided consent by opening the door and holding it open for them to enter, PO Brown said § 87(2)(b) never physically gestured for them to come in. The officers also neither recorded § 87(2)(b) consent on BWC nor did they prepare a Consent to Search form, both of which are required when obtaining a civilian's consent.

§ 87(2)(g)

§ 87(2)(g)

Indeed, both officers said they did not have any specific reason to believe § 87(2)(b) was either armed or dangerous, and the hypothetical possibility that someone might retrieve a weapon in their apartment—absent any specific evidence that it might actually happen—does not allow officers to enter without consent. That Patrol Guide further suggests that the officers overstepped their bounds by entering the apartment, as it explicitly notes the authority to enter a residence during civil disputes such as evictions lies solely with the marshal. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation I – Abuse of Authority: Police Officer Clarence Brown threatened to arrest § 87(2)(b).

It is undisputed that PO Brown threatened to arrest § 87(2)(b) for unlawfully evicting § 87(2)(b)

§ 87(2)(b) believed the eviction order from landlord-tenant court allowed him to evict § 87(2)(b) anytime on October 31, 2019, rather than after midnight (i.e. November 1, 2019) (BR 6).

However, § 87(2)(b) and the officers believed § 87(2)(b) had rights to the apartment throughout the entirety of October 31, 2019, because the order did not include a specific time for the eviction to occur on October 31, 2019 (BRs 7-9). Though the officers ultimately agreed with § 87(2)(b) interpretation, they both acknowledged feeling uncertain at the time about how to interpret the order.

The investigation obtained matching copies of the eviction paperwork from § 87(2)(b) and the Bronx landlord-tenant court (BRs 16-18). The paperwork contains typed and hand-written portions. PO Iobbi was not sure if he reviewed both the hand-written and typed documents, but PO Brown confirmed that he read both. The hand-written portion notes the eviction is “stayed until 10/31/19,” while the typed portion notes the “earliest date upon which the execution **may** occur is 10/31/2019” (emphasis added). The wording on the typed portion clarifies that the eviction “may” occur on October 31, 2019. The investigation accordingly determined that the officers’ interpretation of the eviction order—namely, that the eviction had to occur after October 31, 2019—was incorrect.

NYPD Patrol Guide, Procedure 214-12 instructs officers to arrest individuals who commit unlawful evictions by changing the locks of entrance doors if they refuse to allow the victims to reenter the premises (BR 19). NYPD Patrol Guide, Procedure 214-13 further states that in civil disputes, officers’ roles are limited solely to preserving the peace and protecting life and property, as “the authority to break and enter pursuant to purely civil process such as repossessions, evictions and civil commitments is given to the city marshal” (BR 15).

The officers believed § 87(2)(b) committed an unlawful eviction when he changed the locks to the apartment, but that belief was based on an erroneous interpretation of the court paperwork. Indeed, though one part of the paperwork says the eviction is stayed until October 31, 2019—and the word “until” leaves at least some ambiguity as to whether the eviction can occur on the date itself—other portions of the paperwork clarify that the eviction “may” occur on October 31, 2019 (the date § 87(2)(b) changed the locks). Additionally, both officers believed the order was at least partially vague and up to interpretation. § 87(2)(g)

Allegation J – Police Officer Clarence Brown acted discourteously toward § 87(2)(b)

Allegation K – Police Officer Joseph Iobbi acted discourteously toward § 87(2)(b)

§ 87(2)(b) testified that both officers stepped on his prayer rug and prayer beads on the floor of his bedroom with their wet boots (BR 6). He believed the officers intended to disrespect his religion, as he maintained that the rug was clearly identifiable as religious—it had an image of a mosque on it—and he had told the officers at the beginning of the encounter that he was praying when they knocked. § 87(2)(b) did not ask the officers to get off the items because he was afraid of how they might react.

Neither officer recalled either hearing § 87(2)(b) discuss prayer or stepping on his prayer rug or prayer beads (BRs 8-9). § 87(2)(b) was around a corner in the apartment and did not observe the officers in § 87(2)(b) bedroom (BR 7).

There is no civilian cellphone footage. The officers' BWC footage only briefly depicts where they stood in § 87(2)(b) room. At the 00:05 minute mark of the media player timestamp of PO Iobbi's BWC footage (visible at the bottom of the screen), PO Brown stands on a rug, though the rug is only partially depicted and it is unclear if there is any religious iconography on it (BR 2). PO Brown's BWC footage does not show what, if anything, the officers stood on (BR 3).

§ 87(2)(g)

Allegation L – Police Officer Clarence Brown spoke discourteously to § 87(2)(b)
Allegation M – Police Officer Clarence Brown made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) alleged that PO Brown told him, "I'm going to fucking arrest you," "You get on my fucking nerves," and, "You're going to jail, boy" (BR 6) (threat of arrest allegation within Allegation I).

The officers either denied or did not recall hearing PO Brown make these comments (BRs 8-9, 20-21). The partial BWC footage does not capture PO Brown making these statements (BRs 2-3), and § 87(2)(b) said he did not hear these statements (BR 7).

§ 87(2)(g)

Allegation N – Sergeant Brian Martin entered § 87(2)(b) in the Bronx.
Allegation O – Sergeant Brian Martin searched § 87(2)(b) in the Bronx.

It is undisputed that when § 87(2)(b) said he could not locate the key to § 87(2)(b) room, PO Iobbi and PO Brown handcuffed him and placed him in the backseat of their patrol car. They then waited for their supervisor, Sgt. Martin, to arrive and assess the situation.

PO Iobbi placed his BWC on the front dashboard of the patrol car as § 87(2)(b) sat in the backseat (BR 2). The audio is partially muffled because the radio is playing, and the screen is almost entirely black, as the vehicle is dark. At the 15:09 timestamp of the media player (visible at the bottom of the screen), Sgt. Martin opens the backdoor to the patrol car and speaks with § 87(2)(b) who tells him that § 87(2)(b) already moved out because he was ordered to vacate the apartment "by" the 31st and not "on" the 31st. Sgt. Martin says, "But he had until the end of the day here." At 15:45, PO Iobbi moves the camera and the conversation becomes further muffled. PO Brown had turned off his BWC before that conversation began, § 87(2)(g), § 87(4-b)

§ 87(2)(b) said when he was handcuffed and sitting in the patrol car, Sgt. Martin asked if the officers could go back inside the apartment to check for § 87(2)(b) possessions (BR 6). § 87(2)(b) said yes because he interpreted Sgt. Martin's question as an order and believed he had no choice. Sgt. Martin did not tell § 87(2)(b) that he had the right to refuse the officers' entry. The officers took § 87(2)(b)

out of the vehicle, removed his handcuffs, and they all walked back into the apartment.

Sgt. Martin said when he arrived on scene, he first spoke with PO Iobbi and PO Brown (BR 20), who said § 87(2)(b) had lived in the apartment for more than 30 days, was up to date on his rent, and had returned home to find that the front door locks were changed. They also said § 87(2)(b) admitted to changing the locks. PO Brown and PO Iobbi had already asked § 87(2)(b) for permission to allow § 87(2)(b) to retrieve his property, but § 87(2)(b) had refused. It was Sgt. Martin's understanding that § 87(2)(b) had not allowed PO Brown and PO Iobbi inside the apartment and that the officers had not entered prior to his arrival. Sgt. Martin did not discuss any eviction orders or landlord-tenant court paperwork with PO Brown or PO Iobbi. He did not review any paperwork.

After that initial conversation, Sgt. Martin spoke with § 87(2)(b) who was still handcuffed in the patrol car (BR 20). Sgt. Martin believed § 87(2)(b) was handcuffed because he had unlawfully evicted the tenant when he changed the apartment locks. Sgt. Martin told § 87(2)(b) that § 87(2)(b) wanted to recover his property and leave. At first, § 87(2)(b) was "a little against it," as he said § 87(2)(b) had no possessions left in the apartment. Sgt. Martin said the officers just wanted to see the bedroom so they could tell the tenant if anything was left in it. Sgt. Martin also told § 87(2)(b) that the dispute could be "easily resolved if § 87(2)(b) allowed [the officers] to go in and confirm that there is nothing in there." § 87(2)(b) ultimately changed his mind and gave the officers permission to enter. It was Sgt. Martin's understanding that the officers needed § 87(2)(b) consent to enter. Sgt. Martin ultimately decided to let § 87(2)(b) go with a summons rather than arrest him because he had allowed the officers to enter the apartment.

PO McGing had no recollection of the circumstances of this dispute, as he was Sgt. Martin's operator and was concerned primarily with the sergeant's safety rather than with the facts of the incident (BR 20). PO McGing did not recall if Sgt. Martin or any other officers asked civilians for permission to enter the apartment or if any officers informed civilians that they needed to enter. It was Sgt. Martin's decision for the officers to enter, and PO McGing did not know why Sgt. Martin made that decision. PO McGing entered the apartment because he had to go wherever Sgt. Martin went.

Under the Fourth Amendment of the U.S. Constitution and Article I, §12 of the New York Constitution, warrantless entries into private dwellings are presumptively unreasonable unless the occupants of the dwelling provide consent, or the officers prove exigent or emergency circumstances necessitated their entry. People v. Scott, 133 A.D.3d 794; Payton v. New York, 445 U.S. 573 (BRs 11-12). If one occupant of a dwelling provides consent but a different one on scene refuses, the officers may not enter. Georgia v. Randolph, 547 U.S. 103 (BR 13). NYC Administrative Code §14-173 establishes that officers may not obtain consent using threats or promises, and they must record the civilian's consent with their body-worn cameras and "document the time, location, and date of such search" (BR 14). NYPD Patrol Guide, Procedure 214-13, states that officers may not obtain consent using threats or promises, and they must record the civilian's consent with their BWCs and "document the time, location, and date of such search." It further states that in civil disputes such as this one, officers' roles are limited solely to preserving the peace and protecting life and property, as "the authority to break and enter pursuant to purely civil process such as repossessions, evictions and civil commitments is given to the city marshal" (BR 15).

§ 87(2)(g) At the time it was given, § 87(2)(b) was handcuffed, arrested, and in the back of a patrol car. That context was a coercive one, as the officers were able either to take § 87(2)(b) to the stationhouse for processing or let him go based on his response. Indeed, Sgt. Martin acknowledged framing the conversation in such terms. § 87(2)(b) was initially against allowing them to enter, but after Sgt. Martin said the situation could be "easily resolved" if § 87(2)(b) let them in, § 87(2)(b) changed his mind. Sgt. Martin's comment was

implicitly both a promise—§ 87(2)(b) would not be arrested if he let the officers in—and a threat—he would be arrested if he did not. Sgt. Martin ultimately followed through on that threat/promise, as he let § 87(2)(b) go with a summons rather than an arrest because § 87(2)(b) had let the officers inside. Sgt. Martin also believed § 87(2)(b) had already refused the other officers' entry, which further shows he knew § 87(2)(b) did not want them to come in and that he attempted to change § 87(2)(b) mind. Finally, none of the officers captured the consent on BWC footage or prepared a Consent to Search form as required. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation P – Police Officer John McGing damaged § 87(2)(b) property.

§ 87(2)(b) alleged that when he and the officers went back inside, Sgt. Martin said the officers needed to check § 87(2)(b) room (BR 6). § 87(2)(b) still could not find the keys, so the officers allowed him to try to pry the door open with a kitchen knife. When that did not work, § 87(2)(b) said the officers would need to break the door down if they wanted to see inside. PO McGing asked § 87(2)(b) why he would not break the door down himself, and § 87(2)(b) said the officers should do it if they wanted to go in. PO McGing told § 87(2)(b) that it was his apartment, and he ordered him to break down the door. § 87(2)(b) complied and kicked the door open, breaking the lock and cracking the doorframe (BRs 22-25).

The officers either did not recall the circumstances regarding opening the bedroom door, or they denied that PO McGing ordered § 87(2)(b) to break it down and said instead that § 87(2)(b) did that of his own volition (BRs 8-9, 20-21). § 87(2)(g), § 87(4-b)

§ 87(2)(b) was outside and did not observe this portion of the incident (BR 7).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation Q – Sergeant Brian Martin entered § 87(2)(b) in the Bronx.

Allegation R – Sergeant Brian Martin searched § 87(2)(b) in the Bronx.

It is undisputed that once § 87(2)(b) broke down the door to § 87(2)(b) bedroom, at least some of the officers—including Sgt. Martin—entered and observed that it was completely empty.

As previously described, § 87(2)(b) believed he had already evicted § 87(2)(b) and that § 87(2)(b) had no rights to the apartment, including his old bedroom (BR 6). In a phone statement, § 87(2)(b) clarified that city marshals came to the residence and formally effected the eviction sometime before the officers arrived (BR 26). No marshals were present during this incident. § 87(2)(b) was unable to locate and provide to the investigation, documentation from the city marshals confirming when they came to the apartment.

§ 87(2)(b) believed he had not been evicted on October 31, 2019, and that he still had rights to the apartment, including his private bedroom (BR 7). He wanted the officers to check the room to determine whether he had any possessions left in it.

Sgt. Martin said he entered the bedroom to see if § 87(2)(b) had any possessions left in it (BR 20).

Absent a warrant, officers need consent or an exigent or emergency circumstance to enter and search a premise that a civilian has a reasonable expectation to privacy in. People v. Scott, 133 A.D.3d 794; Payton v. New York, 445 U.S. 573 (BRs 11-12). NYC Administrative Code §14-173 establishes that officers may not obtain consent using threats or promises, and they must record the civilian's consent with their BWCs and "document the time, location, and date of such search" (BR 14). According to NYPD Patrol Guide, Procedure 214-13, in civil disputes such this one, officers' roles are limited solely to preserving the peace and protecting life and property, as "the authority to break and enter pursuant to purely civil process such as repossessions, evictions and civil commitments is given to the city marshal" (BR 15).

The investigation was unable to determine whom the bedroom legally belonged to during this incident, and it therefore could not determine whether the officers had valid consent to enter. Though the eviction paperwork makes clear that the eviction could have occurred on October 31, 2019, that does not necessarily mean that it did. Indeed, city marshals would still have needed to provide § 87(2)(b) with notice and to have come to the apartment to formalize matters. § 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- PO Brown has been a member of service for three years and has been a subject in two other CCRB complaints comprised of six allegations, none of which were substantiated (**BR 30**). § 87(2)(g) [REDACTED]
- PO Iobbi has been a member of service for three years and has been a subject in one other CCRB complaint comprised of one allegation, which was unsubstantiated (**BR 31**). § 87(2)(g) [REDACTED]
- PO McGing has been a member of service for 24 years and this is the first CCRB complaint to which he has been a subject (**BR 32**).
- Sgt. Martin has been a member of service for 18 years and has been a subject in two other CCRB complaints comprised of six allegations, of which one was substantiated (**BR 33**):
 - Case #201207181 involved a substantiated allegation of searching a person against Sgt. Martin. The Board recommended Charges, and the NYPD imposed no discipline.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- § 87(2)(b) [REDACTED] filed a Notice of Claim with the City of New York alleging that officers unlawfully entered his residence and ordered him to break his door down (**BR 35**). He is seeking \$145.00 as redress. There is no 50H hearing scheduled (**BR 36**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad No.: 13

Investigator: William L. Moss
Signature

Inv. Will Moss
Print Title & Name

05/26/2021
Date

Squad Leader: Laura Kastner
Signature

IM Laura Kastner
Print Title & Name

05/26/2021
Date